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ABSTRACT

In this speech, the Assistant Attorney General of the Civil Rights Division, U.S. Department of Justice, focuses on the civil rights enforcement record of the Justice Department under the Reagan Administration. First, in the area of voting rights, Reynolds describes how jurisdictions covered by the "preclearance" requirements of the Voting Rights Act were asked to submit redistricting plans to the Attorney General's office for approval; no proposal, he emphasizes, was cleared until officials were sure that it had neither a racially discriminatory purpose nor effect. Other efforts to ensure black Americans' right to vote are also outlined. Second, the record of the Reagan Administration in criminal civil rights prosecutions is reviewed briefly. Third, Reynolds discusses school desegregation, outlining suits filed by the Federal government against various school districts. Fourth, enforcement of fair housing statutes is discussed, and fifth, Federal efforts to erase employment discrimination are described. In conclusion, Reynolds contends that despite charges to the contrary, the Justice Department under Reagan is indeed enforcing civil rights for racial minorities. (GC)

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REMARKS

OF

WM. BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
U.S. DEPARTMENT OF JUSTICE

BEFORE

THE NATIONAL BAR ASSOCIATION

TUESDAY, AUGUST 9, 1983
SEATTLE, WASHINGTON

UD 023 045

Thank you, Mr. Dawson; ladies and gentlemen.

Since its inception in 1925, the National Bar Association has been in the forefront of the battles for equal justice under law, fighting to assure that the Constitutional guaranties of civil and political rights become a reality for black people in the United States. Those efforts have brought us far since that great legal scholar, Dr. Charles H. Houston, wrote his article on the "Need for Negro Lawyers," and have contributed immensely to the nation's struggle to live up to those famous words in our Declaration of Independence that "all men are created equal." But, as you know all too well, that struggle is not yet over. And the black lawyer, today as well as yesterday, often stands between justice and lawlessness in the nation on behalf of the socially, politically and economically disenfranchised among us, as well as those who, although they may not be poor, also face the persistent problems created by discrimination based upon race.

You know better than I that down through the years many lawyers who happen to be black have found the going rough -- very rough. For many years black attorneys were excluded because of their race from jobs in the various agencies of many local, state, and federal government, as well as in many areas of the private sector. I am sure that many of you here today remember the time when black lawyers were recruited into the government to run elevators and serve as messengers; when black lawyers had to work in the post office at night in order to support their

private practice during the day; and when black female lawyers were limited to secretarial duties.

The tireless labors of the black bar broke down the doors of segregation and made many of those practices history. Yet there is more, much more, to be done to rectify those evils of the past. Protecting Americans from discrimination based on race still requires constant vigilance, and fostering a more authentic equality of opportunity is much easier said than done. The national government -- specifically the Department of Justice -- is charged with a leading role in these tasks, but it can always benefit from the thoughts and ideas of citizens such as you. If I can accomplish anything today, it would be to open our door to you so that we might join in a dialogue and discussion of benefit to all Americans.

This afternoon, I want to give you the facts of our enforcement record. These are facts not always acknowledged, if indeed they are mentioned at all, in the newspaper stories and editorial commentary you read, or in the television accounts you see. Yet they are fully documented and readily verifiable facts that have withstood the most painstaking and often hostile scrutiny of the congressional committees and subcommittees with oversight responsibility for our civil rights enforcement activities.

The record shows that in every area of civil rights' enforcement assigned by law to the Attorney General, the Department of Justice in the past 30 months has been every bit as

vigorous and as uncompromising in its war against unlawful discrimination as any previous administration. Note, I did not restrict my comparison to the immediately preceding administration; I said "any previous administration."

Our mandate includes ensuring that race not be allowed to interfere with the most precious right in a democracy -- the right to vote. In carrying out our enforcement responsibilities under the Voting Rights Act of 1965, which was extended and amended last year, this Administration has, for the first time, provided to black Americans the long-awaited guarantee that the redistricting process will no longer be a "loaded game board" that deprives minorities meaningful participation in the electoral process. With the 1980 Census, virtually all jurisdictions covered by the "preclearance" requirements of the Voting Rights Act were required to submit to the Attorney General for approval congressional redistricting plans, State legislative redistricting plans, county and city redistrictings, school board redistrictings, justice court redistrictings and police jury redistrictings -- and that does not begin to exhaust the list. No proposal has been "precleared" until we were absolutely convinced, after a painstaking and searching review, that it had neither a racially discriminatory purpose nor a racially discriminatory effect. Statewide reapportionment plans -- involving either the State legislative or congressional districts, and, in most cases, both -- were disapproved for Texas, North Carolina,

Georgia, Virginia, South Carolina, Louisiana, New York, Mississippi, and Alabama, because in our judgment they would have been racially discriminatory. We have recently objected to the county-wide redistricting plans for some 15 Mississippi counties for the same reason.

This enforcement activity has been critical to affording black voters the opportunity finally to have an equal voice in the political process. Registration drives mean little if, for racial reasons, the reapportionment process unfairly divides black voting strength into several districts while consolidating the strength of white voters. This Administration has stood firm, and often alone, against such practices, so that black Americans can now exercise their right to vote as freely and as fully as white Americans, as Hispanic Americans, as Asian Americans -- as all Americans.

We have, in addition, been most active on the litigation front to ensure strict adherence to the Voting Rights Act, participating thus far in 52 separate cases, 25 of which were brought during this Administration. With respect to Section 2, which was amended last year by the Congress, we have a special litigation team in the Civil Rights Division devoting its efforts to effective enforcement of that provision. That team has challenged in court the reapportionment of the Chicago City Council and the New Mexico Legislature as being in violation of new Section 2, as well as various voting changes in Mississippi,

Alabama, and South Carolina. It has on several occasions defended the constitutionality of Section 2, including a recent case involving the City of Sarasota, Florida. And, it is actively investigating Section 2 complaints that are being forwarded to our office in increasing numbers.

Let me mention quickly one other dimension of our enforcement efforts in this area. Part of our responsibility under the Voting Rights Act is to dispatch federal election examiners and observers when necessary to ensure voting rights. For example, in Alabama's primary election held in September 1982, a record number of observers -- 461 -- were sent to monitor polling places. And last week, I directed 322 federal observers into Mississippi to cover its primary elections in that state. That, my friends, is law enforcement, and it's law enforcement at a level of activity that outdistances prior administrations.

Let me turn to another area: our criminal civil rights prosecutions. Here, too, the record of this Administration is unprecedented. Since January 20, 1981, the Civil Rights Division has brought 112 new civil rights prosecutions, eighty of which have been tried. These figures put us well ahead of our predecessors; indeed, in fiscal year 1982, we filed more criminal civil rights cases than had been filed in any previous year, and, in the current fiscal year, we are setting a pace that will likely result in the most prosecutions for crimes of racial violence in the history of the Division.

Our prosecutions have resulted in indictments, convictions, and affirmances of convictions for such activities as racially

motivated murders of black citizens, police and border patrol brutality, Ku Klux Klan activities, importation of Indonesian nationals for involuntary servitude, and physical abuse and involuntary servitude of migrant farm workers. We stand proudly on this enforcement record.

Let me illustrate our commitment in this area by telling the tragic story of a young black jazz musician in Kansas City. One evening he was innocently practicing his art in a city park. A group of white youths assaulted him. He was beaten to death -- with a baseball bat. The man's assailants were brought to trial before a local jury -- and acquitted of the crime.

Now many years ago, as you so well know, this is where the story would have ended. But under the pertinent federal statute, we investigated the case and were able to prove racially-motivated intent on the part of the attackers, and obtain their convictions. The guilty parties are now serving life terms.

In the area of school desegregation, we filed suit two weeks ago against the State of Alabama for failing to dismantle its dual system of higher education. With the Alabama higher education case, we have thus far four school desegregation suits that have been authorized for filing by this Administration, twice the number claimed by the prior administration during the comparable period. Moreover, we have negotiated desegregation consent decrees in 15 school cases, and have another 14 school cases that are currently in litigation. The trial in the Yonkers case, alleging

both school and housing violations, began last week. In addition, a number of school systems are under investigation by the Division based on claims of racial discrimination, several of which involve allegations of racial discrimination in the distribution of educational resources among schools, a type of constitutional violation not pursued in previous Administrations.

The Department of Justice also has enforcement responsibility under the 1968 Fair Housing Act. This Administration has authorized the filing of complaints in 9 major housing discrimination cases, and has under investigation more than twice that number. There are additional housing suits currently being readied for filing in the immediate weeks ahead.

In May of this year, the Division opened a new initiative under the Fair Housing Act, charging a major California housing developer and manager with employing a racial quota system to ensure that minority tenants constituted no more than a set percentage of the residents of the housing complex. This practice, euphemistically labelled "integration maintenance," is designed to put a lid or cap on the number of minorities allowed to move into a housing complex or neighborhood. Racial housing quotas are not the only exclusionary practices being used. Subtle forms of racial steering, race-conscious solicitation practices, preferred tenant lists, and the like, are some of the other techniques that have been brought to our attention. Exclusionary housing practices based on race find no haven in the law, whether

they be for purposes of "integration maintenance" or for any other purpose. The Justice Department is planning a major enforcement effort under the Fair Housing Act against such conduct, which, although widespread, was not challenged in the prior Administration.

To assist that enforcement effort, the Administration recently proposed that Congress amend the 1968 Fair Housing Act to strengthen its enforcement provisions. Our proposal would (1) measurably strengthen the HUD conciliation process, (2) greatly enhance the Attorney General's litigating authority by empowering him to sue on behalf of individual claimants and to seek the imposition of substantial penalties for violations, and (3) extend to private litigants a stronger and more meaningful independent right of action that allows for the award of punitive damages and the recovery of attorney fees where liability is found.

Another critically important area of the Department's civil rights enforcement responsibility concerns public employment. The Civil Rights Division is currently involved in over 100 employment discrimination lawsuits, 20 of which have been filed by this Administration. These are not "single-victim" cases, as some have charged. Rather, they are "pattern and practice" suits, where the Division is seeking relief for all individuals, both within and outside the employer's work force, who were excluded from promotion or hire on account of race or sex. Thirty cases of employment discrimination have been resolved by consent decrees since January 20, 1981, and some 23 additional

charges of unlawful discrimination involving 36 State and local government employers are currently under investigation. Just two recent examples of our efforts in this area are the Division's filings against the police departments of Milwaukee, Wisconsin, and Suffolk County, New York, alleging discrimination against blacks and women in promotions and assignments.

Moreover, during the last 2 1/2 years, the Department has participated in some 14 employment discrimination cases before the Supreme Court, including the Newport News Shipbuilding case, in which the Court ruled just last month that the Pregnancy Discrimination Act prohibits employers from denying pregnancy disability benefits to the spouses of male employees. In the aftermath of the Newport News Shipbuilding case, seven new lawsuits asserting similar claims of discrimination have been authorized in the last week and are now being readied for filing.

Again, our record of enforcement activity in this area outpaces that of the previous Administration; in fact, we have already authorized more employment lawsuits to be filed in the first 30 months than our predecessors did after a full three years in office, and we have more coming.

Standing alone, these facts forcefully refute the charge that the Reagan Justice Department is not enforcing civil rights. As I indicated at the outset, the record of activity I have just recounted easily matches and for the most part outshines that of any previous administration and will become the standard against

which future administrations are measured. But a simple review of the number of cases we are prosecuting does not tell the whole story. A close look at the types of cases we are filing shows that we have boldly pioneered new areas of civil rights enforcement, attacking injustice on all fronts and with all the tools at our disposal.

For example, last Fall the Civil Rights Division brought suit against the Chicago Park District, charging racial discrimination in the allocation of resources within a public park system. This suit marked the first time ever that the Federal Government had challenged discrimination of this kind.

In January of this year the Division filed suit against the Town of Cicero, Illinois, alleging both employment and housing discrimination. The Cicero case was the first housing discrimination action ever filed in connection with the Housing and Community Development Act of 1974, and marks the first time ever that the Federal Government has charged a municipality with both employment and housing discrimination in the same lawsuit. Moreover, although more than 15 years have now elapsed since Martin Luther King, Jr.'s march in Cicero turned the national spotlight on that City's discriminatory treatment of black Americans, no previous administration had ever moved to enforce federal civil rights protections in Cicero.

Our housing discrimination case attacking a California developer's use of a quota system to limit the percentage of

black tenants is the first case of its kind brought by the Federal Government and, as I stated earlier, marks the beginning of a long-overdue Department initiative against such practices.

We sent more federal election observers to monitor Alabama's 1982 primary elections than had ever been deployed by any previous Administration, and followed that up with another large number in Mississippi for its primaries.

Our suit attacking cruel and inhuman conditions in the Hawaii prison system marked the first time that the Federal Government had brought an action pursuant to the Civil Rights of Institutionalized Persons Act.

And, in an employment discrimination suit against Fairfax County, Virginia, we obtained a back pay award of $2 3/4 million on behalf of 685 female and black victims of discrimination -- the largest Title VII recovery against a public employer, both in terms of the number of dollars and the number of individual claimants in the history of the Department.

There are, as you know, other "firsts" that can be credited to this Administration. The Department of Justice recently challenged for the first time a municipal police department's racial quota system that discriminated against non-black officers with respect to promotions. And, we filed with the Supreme Court a brief in the Boston lay-off case maintaining that the police and fire departments could not use race to disrupt ordinary layoff procedures under an admittedly bona fide seniority system.

Notwithstanding the criticism for those actions -- criticism that they put us on the wrong side of the equal employment issue and that they signalled a departure from the Division's "traditional" representation role -- I would maintain that the filings were compelled by our "tradition." The Justice Department and its Civil Rights Division are charged with broad enforcement responsibiities that require insuring the full protection of the Federal laws to all individuals, without regard to race, color, sex, religion or national origin. We are not a special interest law firm, and we cannot tailor either our legal interpretations or our enforcement policies to serve any particular group, whether its membership is defined by economic circumstance, political affiliation, race, sex, or any other similarly irrelevant criteria.

Congress has time and again rejected special interest legislation in the area of civil rights. In every major enactment since 1964, it has made clear that the rights protected by our federal civil rights statutes are universal in their application to all persons. At the center of this statutory network of protections against unlawful discrimination -- be it in our schools, our workplaces, our neighborhoods, or elsewhere -- resides that uniquely American belief in the primacy of the individual. In this country, all persons stand as equals before the law, and the rights of one are the rights of all.

This is, of course, the constitutional guarantee provided in the Equal Protection Clause of the Fourteenth Amendment. As

the Supreme Court held in Shelley v. Kraemer, 334 U.S. 1, 22 (1948), it is a guarantee "to the individual" -- not to groups. The rights established are personal rights and thus, as Justice Powell noted in his opinion in Bakke, they "cannot mean one thing when applied to one individual and something else when applied to persons of another color. If both are not accorded the same protection, then it is not equal." 438 U.S. at 289-290. The President recently made the same point when he told the American Bar Association:

> The promise in the Declaration of Independence that we are endowed by our Creator with certain inalienable rights was for all of us. It was not meant to be limited or perverted by special privilege, or by double standards that favor one group over another.

The Justice Department's enforcement activity cannot stray from this principle. The Fourteenth Amendment's guarantee of "equal protection of the laws is a pledge of the protection of equal laws." Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). We cannot condemn racial discrimination against black police officers in Nassau and Suffolk Counties in New York, or in Milwaukee, Wisconsin, and ignore the claims of unlawful discrimination by the Hispanic, female and white officers challenging a promotion quota that favors blacks in the New Orleans and Detroit police departments. Justice Thurgood Marshall speaking for the Court this past Term in Arizona Governing Committee v. Norris, slip op. at 9 (July 6, 1983), emphasized once again that Title VII of the Civil Rights Act of 1964, which prohibits discrimination in

employment, "requires employers to treat their employees as individuals, not 'as simply components of a racial, religious, sexual or national class.'"

It is on these terms that we in the Civil Rights Division must operate. Our constituency is not class-based or group-oriented; it is the public at large. We represent all persons equally -- as individuals -- regardless of their group membership. And, it is, therefore, incumbent on the Justice Department to ensure that Title VII's prohibition against racial preference in employment is enforced no less vigorously to protect one person than another, whether black or white, male or female.

Under our Constitution and civil rights laws, there are no preferred classes; there are only prohibited classifications. The enforcement role of the Department of Justice is to challenge every such classification in whatever form or place it is found so that no individual in this country is subjected to different treatment on account of race, sex, religion or national origin. Our record demonstrates the abiding commitment of this Administration to that task. We have been neither timid nor selective in our assault on unlawful discrimination. To charge otherwise is simply unfair. It is unfair to the many able and dedicated lawyers who work with me in the Civil Rights Division. More importantly, it is unfair to the many Americans who look to the national government to enforce the civil rights laws that took so many years to enact, and which were purchased with the hard work and even the lives of American citizens.

The Department of Justice is the nation's law firm; we work for all Americans. And we will not step aside, or act indifferently, when there is evidence that any American's rights have been violated on account of race. As the Supreme Court has said, we in the Department of Justice are "the representatives not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all. . . ." Berger v. U.S., 295 U.S. 78, 88 (1935) (emphasis added).

That is our mandate and it will continue to guide our enforcement of the civil rights laws -- for all Americans.